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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

MAY 01 2003

FILE: [redacted] Office: Miami Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. ' 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. ' 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The acting district director determined that the applicant was not eligible for adjustment of status because she was not inspected and admitted or paroled into the United States. The acting district director, therefore, denied the application.

In response to the notice of certification, the applicant asserts that the Service's conclusion that she was not inspected and admitted or paroled into the United States is incorrect. Referring to Commissioner Meissner's 1999 Service memorandum, the applicant states that any release of an applicant for admission from custody, without resolution of his or her admissibility, constitutes a parole. She asserts that she entered the United States without inspection, she was detained by the Service, and thereafter released. Therefore, her release, as stated in the Commissioner's memorandum, constituted a parole.

When an alien enters the United States within the limits of a city designated as a port of entry, but at a point where immigration officers are not located, the applicable charge is entry without inspection. *See Matter of O-*, 1 I&N Dec. 617 (BIA 1943); *See also Matter of Estrada-Betancourt*, 12 I&N Dec. 191 (BIA 1967); *Matter of Pierre*, 14 I&N Dec. 467 (BIA 1973).

The application for adjustment of status, filed on February 8, 2001, shows that the applicant entered the United States near El Paso, Texas, on May 13, 1987, and that she was not inspected by an officer of the Service. Further, the application for asylum (Form I-589) filed by the applicant on June 22, 1987, and the I-94 portion of the Record of Deportable Alien (Form I-213) issued on June 22, 1987 upon filing of the Form I-589, both show that the applicant had claimed entry into the United States without inspection near El Paso, Texas, on May 13, 1987.

On April 19, 1999, the Commissioner issued a memorandum setting forth the Service's policy concerning the effect of an alien's

having arrived in the United States at a place other than a designated port of entry on the alien's eligibility for adjustment of status under the Cuban Adjustment Act of 1966 (CAA), 8 U.S.C. § 1255. In her memorandum, the Commissioner states that this policy does not relieve the applicant of the obligation to meet all other eligibility requirements. In particular, CAA adjustment is available only to applicants who have been "inspected and admitted or paroled into the United States." An alien who is present without inspection, therefore, would not be eligible for CAA adjustment unless the alien first surrendered himself or herself into Service custody and the Service released the alien from custody pending a final determination of his or her admissibility.

The Commissioner concluded that if the Service releases from custody an alien who is an applicant for admission because the alien is present in the United States without having been admitted, the alien has been paroled. This conclusion applies even if the Service officer who authorized the release thought there was a legal distinction between paroling an applicant for admission and releasing an applicant for admission under section 236. When the Service releases from custody an alien who is an applicant for admission because he or she is present without inspection, the Form I-94 should bear that standard annotation that shows that the alien has been paroled under section 212(d)(5)(A).

In a footnote, the Commissioner added that it may be the case that the Service has released an alien who is an applicant for admission because he or she is present without inspection, without providing the alien with a parole Form I-94. In this case, the Service will issue a parole Form I-94 upon the alien's asking for one, and satisfying the Service that the alien is the alien who was released.

The applicant's claim that her release from Service custody constituted a parole is without merit. The record in this case shows that the applicant claimed to have entered the United States without inspection on May 13, 1987. On June 22, 1987, the applicant filed a Form I-589 asylum application. The I-94 portion of the Form I-213 was issued to the applicant authorizing her employment during the pendency of her asylum application. There is no evidence in the record that the applicant was detained and placed under Service custody subsequent to her entry without inspection on May 13, 1987, or on June 22, 1987 when she filed her asylum application. Furthermore, the applicant failed to submit any evidence to establish that she was in fact detained and placed under Service custody and subsequently released as claimed, or that she surrendered herself into Service custody and the Service released her from custody pending a final determination of her admissibility.

The applicant bears the burden of proving that she in fact presented herself for inspection as an element of establishing

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eligibility for adjustment of status. *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980). The applicant has failed to meet that burden.

It is, therefore, concluded that the applicant was not inspected and admitted or paroled into the United States. There is no waiver available to an alien found statutorily ineligible for adjustment of status on the basis that she was not inspected and admitted or paroled into the United States. Therefore, the applicant is not eligible for the benefit sought. The decision of the acting district director to deny the application will be affirmed.

ORDER: The acting district director's decision is affirmed.